

EXPLANATORY MEMORANDUM TO
THE BOROUGH OF ROTHERHAM (SCHEME OF ELECTIONS) ORDER
2015

2015 No. 884

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Borough of Rotherham currently operates a scheme of partial council elections by thirds (i.e. with one third of its councillors being elected each year in three years out of four). The purpose of this instrument is to specify a scheme of elections for the ordinary elections of councillors of the borough from 2016 onwards consisting of whole council elections every four years. The instrument provides for elections in 2016 and every four years thereafter. The instrument also changes the years of parish elections within the Borough of Rotherham.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 85 of the Local Government Act 2000 (“the 2000 Act”) prescribes three options for the scheme for the ordinary elections of councillors of a principal council. For all three options the term of office of councillors is four years. The essential characteristics of the three schemes can be summarised as:

(a) a scheme under which elections are held in a given year and every fourth year after it, and all councillors are elected and retire together (“whole council elections”),

(b) a scheme under which elections are held in a given year and every second year after it, and one half of the councillors are elected in each year in which elections are held (“election by halves”), or

(c) a scheme under which elections are held in a given year and in each year in three years out of four thereafter and one third of the councillors are elected in each year in which the elections are held (“elections by thirds”).

4.2 The Borough of Rotherham currently operates elections by thirds.

4.3 Section 86(A1) of the 2000 Act provides that the Secretary of State may by order make provision to secure that the scheme for the ordinary election of councillors of a principal council in England is a scheme of whole council elections. “Principal council” means a county council, a district council or a London Borough Council (see section 84).

4.4 Section 87 of the 2000 Act provides a power to the Secretary of State to change the years in which the ordinary elections of councillors of any specified local authority are to be held, but which does not change the scheme which prevails for the ordinary elections of those councillors. “Local authority” means a principal council or a parish council (see section 84).

4.5 “Ordinary day of election” means the first Thursday in May (see section 37 of the Representation of the People Act 1983) subject to the power of the Secretary of State by order to specify a different date in certain circumstances. On the fourth day after the ordinary day of elections where there are whole council elections, the whole number of councillors are required to retire together, and newly elected councillors come into office on that same day (see section 7(9)(b) of the Local Government Act 1972).

4.6 Sections 86(7) and 87(3) of the 2000 Act provide that any order which changes the scheme or year of ordinary elections of councillors may also make provision for members to retire at different times than that which they would otherwise have retired.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 In August 2014 a report¹ by Professor Alexis Jay into child sexual exploitation in Rotherham 1997-2013 described how vulnerable children have been repeatedly failed by a council paralysed by complacency, institutionalised political correctness and failures of political and officer leadership. Given such serious documented failures, in September 2014 the Secretary of State informed the House that it was clearly in the public interest to order a statutory inspection of Rotherham council. Louise Casey CB was appointed to undertake a formal best value inspection of the council. Her report was published on 4 February 2015.

¹ See <https://www.gov.uk/government/collections/inspection-into-the-governance-of-rotherham-council> for all documents relating to the Rotherham intervention.

7.2 The report presented a disturbing picture of a council failing in its duty to protect vulnerable children and young people from harm. It confirms a complete failure of political and officer leadership in Rotherham and that poor governance is deeply seated throughout the council. The report found a pervading culture of bullying, sexism, suppression and misplaced political correctness that has cemented the Council's failures; both members and officers lack the confidence to tackle difficult issues for fear of being seen as racist or of upsetting community cohesion. The report concluded that the Council is currently incapable of tackling its weaknesses without substantial intervention.

7.3 On 4 February 2015 the Secretary of State for Communities and Local Government also announced a proposed intervention package to give the council the new start it needs and to put an immediate end to the council's on-going service and governance failures. This package involved the appointment of Commissioners and included bringing forward an Order providing for Rotherham to move to whole council elections from 2016. This would provide the much-needed fresh start in the borough and facilitate the council taking a strategic longer term approach to addressing the issues Rotherham faces.

7.4 The council had 14 days to make representations on the report and on the proposed intervention package. In the final representations made by the council it recognised the "urgent need to now work positively and proactively with the Department and do all we can together to ensure that the intervention measures proposed by the Secretary of State deliver the change, improvement and better outcomes needed by the people of Rotherham". The council also acknowledged that to "deliver the fresh start needed for Rotherham the Council has to change its culture and must become a more modern local authority; and it looks forward to supporting the Commissioners to make this happen".

7.5 On 26 February 2015 the Secretary of State for Communities and Local Government, together with the Education Secretary, issued Directions to the Council implementing the proposed intervention package, and appointed a team of Commissioners to exercise certain functions of the Authority and oversee a rigorous programme of improvement to bring about the essential changes in culture and ensure that there is in future effective and accountable political and officer leadership. He also confirmed his intention to make an order moving Rotherham to whole council elections from 2016.

7.6 There are a number of parishes in Rotherham. There are parish elections due in 2015. It makes sense and is more cost efficient for those parishes to be on the same cycle as the borough council elections. To keep disruption to a minimum it was felt to be preferable for those parish councillors to be elected for a term of 5 years so that the cycles coincide from 2020 onwards.

- Consolidation

7.7 No consolidation is necessary.

8. Consultation outcome

8.1 Moving to whole council elections in general is in line with the policy announced in the Government response² to the Heseltine report³ (which recommended that all local authorities should hold whole council elections) which stated that, “whilst leaving this for local choice, the Government welcomes the adoption anywhere of four-yearly whole council elections”. Given the circumstances of Rotherham it is right that in this particular case that specific action is taken by Government.

8.2 In the representations received from the Council following the Secretary of State’s announcement of his proposed intervention package, the Council raised no objection to moving to whole council elections from 2016. Indeed the council stated that it “recognises and accepts the conclusions of the Corporate Governance Inspection report and welcomes the appointment of Commissioners to drive forward its future improvement and recovery. There is an undisputed view across the Council that change and a fresh start is critical”. The Council sought clarification regarding the arrangements for the 2015 elections. The Department confirmed that the 2015 elections will proceed as usual.

8.3 Representations were also received from one of the political groups on the council which proposed that whole council elections should be introduced from 2015 rather than 2016. The Secretary of State considered that moving to whole council elections for 2015 would be neither practicable nor desirable. This is because for the 2016 whole council elections there will be adequate time for candidate selection and good planning, which would not be the case if the change were made in May 2015. The 2016 whole council elections will thus provide a good foundation for the fresh start that Rotherham needs.

9. Guidance

9.1 The Department does not intend to issue any guidance alongside this instrument. However, the Department will continue its close dialogue and liaison with the Council and the Commissioners.

10. Impact

10.1 This instrument has no impact on the public sector, business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument.

² Government’s response to the Heseltine review (Cm 8587) March 2013. ISBN: 9780101858724

³ No stone unturned: in pursuit of growth. October 2012.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will continue to maintain a close dialogue and liaison with the Council and the Commissioners.

13. Contact

Maggie Crosby at the Department for Communities and Local Government
Tel: 0303 444 2573 or email: maggie.crosby@communities.gsi.gov.uk can answer any queries regarding the instrument.